BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF	§	
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REVIEW OF THE SECTION 251 UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS	§	**CC DOCKET NO. 01-338**
	§	
IMPLEMENTATION OF THE LOCAL COMPETITION PROVISION S OF THE TELECOMMUNICATIONS ACT OF 1996	§	**CC DOCKET NO. 96-98**
	§	
DEPLOYMENT OF WIRELINE SERVICES OFFERING ADVANCED TELECOMMUNICATIONS CAPABILITY	§	**CC DOCKET NO. 98-147**

REPLY COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division and files these its reply comments on the Notice of Proposed Rulemaking released December 20th, 2001 in FCC Order No. 01-361. These reply comments are timely filed pursuant to the Commission's subsequent order in DA-02-1284.

The Office of the Attorney General submits these reply comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas.

First and foremost, the State believes this proceeding is of the utmost importance to consumers, as it involves the potential regulatory alteration of the unbundling requirements applied

to incumbent local exchange carriers, which are essential to the provision of broadband and other services by competitive providers. Should the Commission ultimately choose to alter these unbundling obligations, it could have far reaching ramifications on the choice of services currently available. Consumers might not have a choice of competitive providers if facilities-based providers are no longer under a regulatory obligation to make parts of their networks available at TELRIC-based rates. Our comments are limited to specific responses to the following commenters:

Public Utility Commission of Texas.

We wish to affirm the comments of the Public Utility Commission of Texas, particularly those filed in May which reflect the longstanding and innovative experience the Texas Commission has had with unbundled network elements. We strongly urge the Commission to rely upon the experiences of the states, particularly those which have actually been opened to competition, when considering any alteration to the national list of unbundled network elements.

The position of the Texas Commission that a federal-state joint conference be held to coordinate any changes to the list is worthy of the strongest consideration. States such as Texas have considerable experience with UNE issues which they have developed through the arbitration process and this experience is essential in assisting the Commission in understanding the on-the-ground facts of telecommunications competition in this area.

We also agree with the Texas Commission that competition has not sufficiently developed to jump to a requirement of full scale facilities -based competition. Much of the mere six years in which the Telecommunications Act of 1996 has been in place has been occupied with litigation and regulatory implementation proceedings. We are only now beginning to get to the point at which the law on large, important issues is beginning to be settled, such as the recent Supreme Court Verizon

decision on TELRIC - based rates. Many other issues are pending at that court and at other appellate courts, as well as at the Commission, on remand and otherwise.

As these issues are settled, and true competition without all of the regulatory and legal uncertainty surrounding it is allowed to take place, it will become apparent which unbundled network elements will ultimately remain truly necessary for the competitive market, but action at this time, particularly without close consultation with the states, is premature.

Consumer Federation of America, Texas Office of Public Utility Counsel, Consumers Union, and Center for Digital Democracy

The State agrees with these commenters that the fundamental approach the Commission appears to be taking in this proceeding is premised improperly. The Commission, as these commenters note at page 2 of their comments, appears to be spending a great deal of time in its notice discussing "reasons and ways to cut back on making network elements available in an effort to stimulate facilities-based, or intermodal competition." Without replicating the arguments these commenters make, the State does find their analysis of Sections 10 and 706 of the Telecommunications Act persuasive. The Commission, as far as we are aware, has not found that significant competition has developed to make regulation unnecessary, nor has it found a major failure of deployment of advanced telecommunications capabilities. The push for intermodal competition, as expressed by the Commission at ¶s 27-28 of the NPRM, can not be at the expense of consumer protection and a fully developed telecommunications marketplace.

As we stated above, it is far too soon to begin experimenting with a marketplace that has not yet fully formed and thereby declare the FTA a failure before it has even been fully implemented. As the commenters state on page 21 of their comments, reading both sections 10 and 706 gives the

Commission guidance which it must follow to maintain appropriate consumer protection under the Act. The Act would not contain these broad consumer protection provisions if they were not to be considered an essential element of its implementation.

General Services Administration

We are particularly supportive of the comments of the General Services Administration, as we are also involved in the provisioning of telecommunications services for governmental entities, and are therefore sympathetic to their position. As governmental entities, many of our telecommunications services are provided under long term contracts or service agreements, and therefore some services have never or only recently been opened to competition under the FTA. It is therefore imperative that these markets be given a reasonable opportunity to operate before they are "scaled-back." Competitive carriers, in many instances, have not even had a chance to compete in the government services market using unbundled network elements. Again, this is an example of why we believe the Commission appears to be moving too quickly in altering the competitive landscape. Less competition for the provisions of these services is bad for the government, and also, ultimately, its taxpayers. We also agree with the GSA that, as they state at page three of their comments, the quality of service requirements for government are of significant importance. The availability of UNEs allows competitive carriers to meet these requirements in Texas at a ubiquitous, statewide level, something that would be impossible to replicate by a facilities-based carrier at this early stage of competition.

Comments of The Pennsylvania Office of Consumer Advocate, Ohio Consumer Counsel, The New Hampshire Office of Consumer Advocate, The West Virginia Consumer Advocate Division, and The Maryland Office of People's Counsel

The State supports these commenters in their analysis of consumer interests. Their analysis that most residential local competition is dependent upon UNEs is accurate. If the availability of UNEs were to be limited, residential local service competition, to the extent that it exists, might well disappear entirely. Competition without UNEs may well then result in higher prices or loss of service options in residential areas. Consumer advocates correctly point out, at page 24 of their comments, that this is inconsistent with the Section 254 universal service obligations of the Commission.

People of The State of California and the California PUC

We support the comments of California with respect to the timing of the review undertaken by the Commission and the need to allow competition based upon UNEs to continue to develop. It is also important, as California states at pages 22-24 of its comments, to allow state supplementation of the unbundling requirements. Each state has, in many respects, a unique market and is at a unique stage of competition. This analysis recognizes individual market conditions and the clear intent of Congress to delegate authority to the states to tailor specific requirements to their markets.

Southwest Competitive Telecommunications Association

The State supports the comments of SWCTA with respect to the development of the telecommunications market. As their comments reflect, at page13, it took 125 years to build the existing monopoly telecommunications network. Diminishing the availability of UNEs and expecting full-fledged facilities-based competition after just six years under the FTA is simply not realistic.

Sprint Corporation

The State supports the comments of Sprint Corporation to the extent that Sprint opposes any rollback of the UNE requirements. The State notes that Sprint operates as an ILEC in Texas and therefore must have concluded that the benefit to it of the UNE obligation outweighs any benefit it might gain from a potential strengthening of its monopoly control of its own network. This is a particularly interesting conclusion for other carriers which may operate as CLECs in markets in which they are not dominant.

The Office of the Attorney General of Texas appreciates this opportunity to provide reply comments on this Notice of Proposed Rulemaking.

Respectfully submitted,

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